

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERTO & CESARE PICCONE,	:	Civil No. 3:21-CV-700
d/b/a LA DOLCE CASA,	:	
	:	
Plaintiffs,	:	
	:	(Judge Mariani)
v.	:	
	:	
NATIONWIDE MUT. INS. CO.,	:	(Magistrate Judge Carlson)
	:	
Defendant.	:	

MEMORANDUM AND ORDER

The background of this order is as follows:

This case was referred to the undersigned for the purpose of addressing some potentially dispositive motions. (Docs. 5 and 7). By way of background, the plaintiffs commenced this action by a complaint. (Doc. 1.) The defendant then filed a motion to dismiss the complaint. (Doc. 5.) The plaintiffs, in turn, filed an amended complaint (Doc.6), which is now the operative pleading in this case. The defendant has filed a renewed motion to dismiss that amended complaint, (Doc. 7), which we will address on the merits presently. However, we believe that these developments have substantive significance for the parties with respect to the pending motion to dismiss the original complaint (Doc. 5), since, as a matter of law, an amended complaint takes the place of the original complaint, effectively invalidating the

original complaint. Crysen/Montenay Energy Co. v. Shell Oil Co. (In re Crysen/Montenay Energy Co.), 226 F.3d 160, 162 (2d Cir. 2000) ("[A]n amended pleading ordinarily supersedes the original and renders it of no legal effect"); see 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1476 (2d ed. 1990) ("A pleading that has been amended ... supersedes the pleading it modifies.... Once an amended pleading is interposed, the original pleading no longer performs any function in the case...."). Therefore, since the initial complaint is now a legal nullity the defendant's motion to dismiss that initial complaint, (Doc. 5), is DISMISSED as moot. Instead, we will address the merits of this litigation through a Report and Recommendation that will be filed with respect to the motion to dismiss the plaintiffs' amended complaint. (Doc. 7).

SO ORDERED, this 3rd day of February 2022.

/s/ Martin C. Carlson

Martin C. Carlson

United States Magistrate Judge